IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

AS.No. 456 of 1994()

OS.76/1992 of PRL.S.C.,THALASSERY
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APPELLANT - PLAINTIFF:

NORTH MALABAR GRAMIN BANK,
HAVING ITS REGISTERED OFFICE
AT KANNUR (BRANCH IRITTY)

BY ADV. SRI.MPR.NAIR

RESPONDENTS - DEFENDANTS:
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1. SHRI M.J. JOHNEY, S/O. JOSEPH,
AGED 41 YEARS, MERCHANT,
RESIDING AT MAMOOTTIL HOUSE,
IRITTY P.O., IRITTY.

2. SHRI PUTHIYA PARAMBIL MOHAMMED
S/O. ANTHRU AGED 42 YEARS,
MERCHANT, RESIDING AT SAINABA
MANZIL, HIGH SCHOOL ROAD, IRIKOOR.

BY ADV. SRI.T.A.RAMADASAN
SRI.M.SASINDRAN

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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A.S. NO. 456 OF 1994

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Dated this the 4th day of July, 2007

J U D G M E N T

Plaintiff in O.S. No.76 of 1992 on the file of the Sub Court, Thalassery is the appellant. Appeal is filed against the decree and judgment passed by the trial court dismissing the suit filed for realisation of money.

2. Plaintiff filed the suit against the defendants alleging that first defendant availed a loan of Rs.15,000/- through its Iritty Branch. A loan agreement was executed by the defendants. As per the agreement first defendant agreed to repay the amount in monthly instalments of Rs.450/-. Amount was disbursed to the first defendant on 11.3.1987 and he executed a receipt. But he did not repay any amount. Hence the suit.

3. First defendant filed a written statement contending that he applied for a loan and signed documents also. After taking his signature in the documents, the Manager informed the first defendant that money will be given to him within two or three days and as and when the amount is ready the

same will be paid to him. It was contended that no amount was given to him as agreed. It was contended that on several occasions he met the Manager for receiving the money and the Manager was evading payment for one reason or other. It was further contended that the Manager went on long leave also. It was contended that thereafter the other staff of the Bank, after verifying the records maintained in the Bank, told the first defendant that he had received the money. First defendant further contended that on getting that information, he met Mr.Thampi, who got signed papers from the defendants. It was contended that he informed the first defendant that money due to the Bank will be paid by him. But no amount was paid. It was also contended that there were complaints against Mr.Thampi and on the basis of the complaint filed by the Chief Inspector of the Head Office of the Bank crime No.308/1987 of Irittty Police Station was registered against the Manager for misappropriation of various amounts including the amount alleged to have been advanced to the first defendant. The first defendant was cited as a witness. The case of the plaintiff that the first defendant was liable for the debt was denied. He prayed for

a dismissal of the suit.

4. The only point arising for considering is whether the respondent can be made liable for the amount claimed in the pliant.

5. It is true that Exhibits A1 to A4 documents show that first defendant applied for a loan and the same was sanctioned. Exhibit A3 is the receipt which was relied on by the plaintiff to contend that actually first defendant received the money. The case of the plaintiff was that amount was credited in the Savings Bank account of the first defendant.

6. As rightly pointed out by the trial court though amount was credited in the account of the first defendant, there is nothing to indicate that the amount was actually withdrawn by the first defendant. Evidence of P.Ws.1 and 2 was not accepted by the trial court. For many of the questions put to P.W.2 he pleaded ignorance. So the oral evidence adduced by the plaintiff was not accepted. The Manager, who really got signed papers, Exhibits A1 to A3, by the first defendant was not examined. The materials on record shows that the first defendant filed Exhibit B1 complaint and a criminal case was registered against

Mr.Thampi, the then Manager and in that case the first defendant was cited as witness for prosecution. Exhibits B3 and B4 are letters written by Mr.Thampi to the first defendant. Exhibit B5 is the cheque for Rs.15,000/- drawn in favour of the first defendant by the Manager and Exhibit B6 is a blank cheque. In Exhibits B3 and B4 there is unequivocal admission by the Manager of the Bank to the effect that he owes money to the first defendant. So the documentary evidence adduced by the first defendant probabilise the case pleaded by him that he had signed documents, but did not actually get money and money was misappropriated by the Manager. The finding of the trial court that though the first defendant had signed in Exhibits A1 to A3, he did not get money from the Bank and hence no decree can be passed against him does not call for any interference. There is no merit in the appeal and the same is only to be dismissed.

In the result, the appeal is dismissed. No order as to costs.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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A.S. NO. 456 OF 1994

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J U D G M E N T

2nd JULY, 2007